UNITED STATES
v.
JOSEPH LACZKOWSKI
AND
EULA G. JONES (MONTNEY)

IBLA 82-1101 Decided March 28, 1983

Appeal from decision of Administrative Law Judge E. Kendall Clarke declaring the Evergreen placer mining claim null and void. Contest CA 8591.

Set aside and remanded to take further evidence.

1. Mining Claims: Contests -- Mining Claims: Determination of Validity

Where a Government mineral examiner examines a mining claim and takes samples there, and, after considering the amount and value of mineralization and the costs of conducting a mining operation, testifies to the effect that, in his opinion, a prudent person would not be justified in expending his labor and means with a reasonable prospect of success in developing a valuable mine on the claim the Government has established a prima facie case of no discovery.

2. Mining Claims: Contests -- Mining Claims: Determination of Validity -- Mining Claims: Hearings

Where the record of a mining claim contest contains evidence suggesting, but not adequately proving, that the claimant has made a valuable discovery, and where, on appeal, the claimant submits an affidavit alleging facts that, if proven, would strongly support a finding that a discovery has been made, it is appropriate to reopen the record to give the claimant the opportunity to establish these facts.

3. Administrative Procedure: Hearings -- Contests and Protests: Generally -- Mining Claims: Contests -- Rules of Practice: Government Contests

Where the owner of an interest in a mining claim dies prior to the filing of a contest complaint against the claim, service of the complaint must be made on the claimant's heirs, or any adjudication following from the complaint does not affect the interest held by the heirs.

APPEARANCES: Joseph Laczkowski, pro se; Arno Reifenberg, Esq., Regional Attorney, U.S. Department of Agriculture, for the Forest Service.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Joseph Laczkowski has appealed the July 8, 1982, decision of Administrative Law Judge E. Kendall Clarke declaring the Evergreen placer mining claim null and void. This contest, serial No. CA 8591, was brought by the Bureau of Land Management (BLM), on behalf of the Forest Service (FS), U.S. Department of Agriculture, which administers the claimed lands, since they are situated in the Rogue River National Forest, immediately south of the Oregon-California border, in secs. 22 and 23, T. 48 N., R. 11 W., Mount Diablo meridian. FS conducted the mineral examination of the claim.

On October 23, 1979, Paul F. Boswell, FS mineral examiner, visited the claim along with other FS personnel to examine its mineralization. He took three samples from appellant's claim, the average value of which was $4.26 per cubic yard for gold and silver, based on gold at $600 per troy ounce (Tr. 21). The value was only about $3.30 per cubic yard using the price of gold at the time of the hearing. The examiner testified that, although gold could "always" be found on the claim, he did not "think [there] would be a chance to make a very profitable mine out of it," and that he did not "think that [one could] make a living at it" (Tr. 28-29). He calculated that operating a mine there would actually lose money, because the costs of recovering gold and silver would be over $5 per cubic yard (Exh. C; Tr. 24, 28-29).

While he did not specifically so state, it is evident from his testimony that the mineral examiner had formed the opinion that the situation at the Evergreen claim was such that a prudent person would not be justified in expending his labor and means with a reasonable prospect of success in developing a valuable mine on the Evergreen placer mining claim. This testimony was adequate to establish a prima facie case of lack of valid discovery. United States v. Dunbar Stone Co., 56 IBLA 61 (1981).

[2] Appellant's evidence established that other claims a short distance upstream and downstream from the Evergreen claim had recently been patented. These claims contain gravels not demonstrably different from those on appellant's claim. However, evidence of mineralization in the vicinity of a claim

gives rise to no more than a geological inference that there may be mineralization on the claim. By itself, such evidence is inadequate to prove discovery. United States v. Jackson, 53 IBLA 289, 296 (1981); United States v. Henault Mining Co., 73 I.D. 184 (1966), aff'd, Henault Mining Co. v. Tysk, 419 F.2d 766 (9th Cir. 1969).

Appellant also testified at the hearing that he had mined gold from the claim and sold it at a profit. He presented testimony from neighboring claim holders (or landowners) generally corroborating that he had recovered gold from his claim and indicating their opinions that it was possible to produce gold from his claim at a profit. However, this evidence did not specify the exact amounts either of gold recovered from the claim or of the expenses incurred in doing so. Therefore, by itself, his presentation fell short of establishing that there was a discovery.

However, appellant has included with his statement of reasons on appeal an affidavit describing his recent mining ventures in a "ponded area of a high bench out of the creek," alleging that he has profitably recovered gold from the claim. He has used specific figures to describe both the amount of gold recovered and his expenses in recovering it. While he uses $900 an ounce, an apparently unrealistically high value allegedly applicable to "jewelry-quality grade gold," his recovery would be profitable even at the much lower prevailing market rate for fine gold. The Government mineral examiner's testimony specifically recognized that hydraulic dredging of bench gravels in a pond created for this purpose might be feasible, although it would be expensive to maintain a pond there (Tr. 53). Appellant alleges that his costs have been low.

If proven, the allegations in appellant's affidavit would strongly support a finding that he has made a valid discovery. In these circumstances, and considering the recent patenting of other claims in the vicinity of appellant's it is appropriate to reopen the record to give him the opportunity to establish the facts alleged in his affidavit.

[3] This contest complaint named Eula G. Jones (Montney), coowner of the Evergreen placer claim with Joseph Laczkowski, as a contestee. However, Jones died on November 9, 1980, prior to the filing of this contest complaint, which was mailed to her last address of record and returned to FS by the Postal Service as undeliverable. In these circumstances, service of the complaint must be made on the claimant's heirs or the legal representative of her estate, and service at the deceased claimant's address of record is not binding upon her successors in interest. See United States v. Johnson, A-30828 (Jan. 29, 1968). Laczkowski has recently confirmed that Jones was a coowner of this claim. FS is aware of the identities of Jones' heirs, who should be joined to the proceeding when it is reopened.

FS argues that it is unnecessary to join all parties holding interests in the claim, citing 43 CFR 4.451-2(b), which provides that "[a] Government contest complaint will not be insufficient and subject to dismissal for failure to name all parties interested, or for failure to serve every party who has been named." This section means that the complaint will not be invalid as to those persons who have been duly served (and over whom the

tribunal has personal jurisdiction) simply because the complainant was unable to serve all claimants. Thus, the contest may proceed, but only the interests of those persons brought within the tribunal's personal jurisdiction may be adjudicated. To hold otherwise would be to violate the fundamental due process principle that no tribunal may adjudicate the interests of a person not properly brought within its authority. The regulations spell out in detail how FS may bring Jones' heirs into this proceeding. It should do so.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the matter is remanded to the Hearings Division in order to take further evidence.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge